

MICHIGAN PROBATE JUDGES ASSOCIATION

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Dear Representative Kurtz:

Hon. KAREN A. TIGHE
Immediate Past President

The Michigan Probate Judges Association has significant reservations about this attempt to "streamline" the adoption process in direct placement adoptions.

AT LARGE MEMBERS

Hon. THOMAS E. NELSON

HB 4646 would allow a mother to sign her consent to adoption without going to court. This would permit the adoption attorney to take the consent of the mother if witnessed by a third party. MPJA recognizes that a provision of the Bill requires the mother to be advised of her rights at the time the consent is taken. Nevertheless we have concerns that the mother may be subjected to undue influence in these circumstances and not given adequate time to make this important decision. Adoption attorneys and adoption agencies make their income on successful adoption finalizations and have a less than neutral interest in the outcome of the matter.

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Under the current law the court will take the consent of the parent in a non-confrontational setting after advising the mother of her rights as a parent, her ability to take more time to consider whether she wants to surrender those rights and inquiring as to whether she has had the ability to talk to a counselor about the decision. Under the provisions of the Bill, the mother has 72 hours to revoke the consent, however given that the original consent does not need to be taken in court but the petition to revoke does have to be filed with the court we are concerned that this distinction may not be realized by the mother should she wish to revoke the consent.

NON-VOTING

Hon. MONTE BURMEISTER
Editor of INTER-COM

Hon. SUSAN L. DOBRICH
MPJA Website

The creation of the responsible father registry together with the presumption that the father of a child born out of wedlock is not interested in retaining his parental rights if he fails to register is of considerable concern to the MPJA. In an effort to make it easier to facilitate an adoption this provision is ignoring basic concepts of due process.

Hon. WALTER A. URICK
Emeriti Judges Association

The United States Supreme Court has held that a parent has a constitutional right to raise his or her child and that a State may only intervene in that right under certain circumstances. In order for a parent to exercise the right to raise a child the parent must first know of the child's existence. Obviously this only applies to a father. A birth

mother has no greater right to a child than does the child's natural father. The mother may have the legal ability to decide on her own whether or not to carry a child to full term and give birth, but once a child is born she and the father have co-equal rights to raise that child. The provision of this bill that requires a father of a child born out of wedlock to register as the father when he may not even know that a child has been born as a result of a sexual relationship he had with the mother or risk losing his parental rights without such notice is of questionable constitutional validity. At least under current law the mother must give testimony under oath as to who the father is as well as her efforts to locate him to give notice of the adoption and the father has the right to seek custody of the child. If the mother claims not to know who the father is under current law she must give testimony as to her efforts to identify the father and the circumstances that would support her inability to do so.

MPJA is concerned not only with this provision and the denial of basic due process but also with the possibility that an adoption finalized as a result of the lack of notice to the father or efforts to locate and give notice to the father will be set aside by a court that finds this failure to be a violation of a father's constitutionally protected rights. History has shown that this has happened in the past and had a devastating impact on all parties concerned. (See in re Clausen, 442 Mich 648 (1993))

The current law already provides that a birth mother may give notice to the father of her intent to place the child for adoption at birth and if the notice is given 30 days prior to the expected date of birth and the father makes no claim of having an interest in the child the father's parental rights may be terminated for that failure (MCL 710.34). In actual experience this provision of the law is rarely used by adoption agencies or adoption attorneys even though it would expedite the adoption process.

The Michigan Legislature recently recognized the rights of a father of a child born out of wedlock when it amended the Paternity Act to allow a biological father to become involved with his child under circumstances in which he had previously been prohibited. Enacting legislation that would diminish a father's right to be involved with his child because the birth mother wants to allow the child to be adopted under the guise of establishing permanency for the child sooner seems inconsistent. How can it be presumed that an adopting parent or parents will be able to provide permanency for the child and that the birth father would not if he knew about the birth?

Everyone wants to achieve permanency for children in a good home but this effort should be done in a sober and deliberate manner and the process should not abandon safeguards for the child and the parties involved. MPJA is concerned that many of the provisions of these Bills, though well intentioned, will have serious unintended consequences.



Elwood L. Brown
MPJA President